

Good morning Mr. Chairman, Ranking Member Fitzgerald and distinguished members of the Subcommittee. Thank you for allowing me the opportunity to appear before you here today. My name is Lou Cannon and I am the President of the District of Columbia Jerrard F. Young Memorial Lodge #1. I am here this morning at the request of National President of the Fraternal Order of Police, Steve Young, to provide this Subcommittee with the concerns of the more than 300,000 members of the F.O.P. with respect to the recent proposed rulemaking by the Federal Trade Commission, and specifically their proposed national "Do-Not-Call" registry.

The Fraternal Order of Police is the nation's largest law enforcement labor organization, with members in forty-three State lodges and more than 2,000 local lodges. A majority of these lodges and members are constantly engaged in charitable endeavors and play an active role in the life of the communities they serve. Here in the District of Columbia, for example, the F.O.P. is actively supporting such worthwhile organizations as the Boys and Girls Club, Mothers Against Drunk Driving (MADD) and the Concerns of Police Survivors. All of these charitable enterprises are supported in part by my local lodge. In turn, we depend on the generosity of the community through grassroots fundraising efforts, which enable us to support these community-wide programs and services.

Since our organization is voluntary in nature, we do not have the staff nor the resources to raise the necessary funds to carry out these programs, and many of our State and local lodges must rely on the efforts of professional fundraisers. Sound public policy dictates that it would be inappropriate for public safety personnel themselves to call residents of their community and seek financial support. Indeed, in some jurisdictions it is illegal to do so. Economically, our State and local lodges cannot afford to purchase, train and provide oversight on an in-house telemarketing effort; nor does the membership have the equipment or skill necessary to conduct their own fundraising campaigns. Thus, the use of an outside commercial telemarketing service bureau is a practical and economic necessity for the Fraternal Order of Police. The State and local lodges that hire these firms mandate that they maintain their own "do-not-call" list, placing the names of those who request it on the list. The creation of a second "do not call" list would cause unnecessary confusion--essentially meaning that the firms employed by the F.O.P. would be forced to follow two sets of rules on behalf of a single organization.

In January of this year, the Federal Trade Commission published in the Federal Register a "Notice of Proposed Rulemaking" to amend the Telemarketing Sales Rule (TSR) which will negatively impact organizations like the Fraternal Order of Police. As you know, the TSR prohibits specific deceptive and abusive telemarketing acts or practices, and is currently limited to telemarketing for commercial purposes only. The proposed rule is aimed to implement Section 1011 of the USA PATRIOT Act (P.L. 107 – 56), also known as the "Crimes Against Charitable Americans Act." The proposed amendments put forward by the Commission would extend the TSR to cover telephone solicitations made on behalf of nonprofit and charitable organizations, and although Section 1011 did not call for the FTC to establish a national "do not call" registry, it has been included in the provisions of the proposed rule to implement that Act.

The original purpose of Section 1011 was to crack down on fraudulent telemarketers using the 11 September terrorist attacks to pose as fake charities in order to take advantage of the compassion of

American citizens. The statement of the sponsor of the legislation upon which Section 1011 was based further strengthens this interpretation of the original intent of this provision. In his introductory statement on S. 1484, also called the "Crimes Against Charitable Americans Act," Senator Mitch McConnell noted that the "fraudulent solicitation of charitable contributions is a problem all across our nation," and that his bill would help to clamp down on those fraudulent telemarketers who used the 11 September tragedies to perpetuate fraud on unsuspecting Americans. Since the enactment of the PATRIOT Act in October 2001, Senator McConnell has relayed his concerns regarding the Commission's intention to impose the "Do-Not-Call" registry to our organization, as well as to the FTC. Writing to our National President, Senator McConnell noted that "when Congress enacted this legislation, it did not envision, nor did it intend for, the FTC to propose a federal 'do-not-call' list."

The Fraternal Order of Police strongly opposes the establishment of this national "do not call" registry, and we further believe that the government should not restrict the right of nonprofit organizations to deliver their message and seek public support based solely upon who compensates the caller. This proposed list does not apply to all nonprofits, only to those calls made on behalf of nonprofits by paid telemarketers. The fact that nonprofits using paid employees to make the same calls will not be subject to the "do not call" list creates a prohibited prior restraint on the nonprofit organizations that do not have the resources to use its own employees.

There are also a series of legal issues which mitigate against the adoption of the amendments to the TSR so as to extend it to calls made on behalf of nonprofit organizations. The purpose of creating a national "do not call" list is ostensibly to protect the privacy of individuals from unwanted telephone calls, however, the proposed amendments to the TSR will not accomplish this goal. For example, the FTC has no jurisdiction over telephone calls made by long distance companies, FDIC regulated banks, nonprofits, or other nonregulated commercial callers. Therefore, the proposal put forward by the Commission will not cover all calls, and will only act to the legal and economic detriment of those actually affected while continuing to allow calls to be made by the classes of callers that generate the most complaints.

In addition, a strong body of law already exists holding that the government is not allowed to favor one telephone call over another based upon the content of the message, and that it is forbidden from favoring commercial speech over constitutionally protected speech. [See *Pearson v. Edgar*, 153 F.3rd 397 (7th Cir. 1998) and *Metro Media, Inc. v. City of San Diego*, 453 U.S. 490, 512 (1980)]. Because the FTC does not regulate long distance companies and banks, for example, calls from commercial interests will be favored over calls made on behalf of a nonprofit organization. Finally, the appeal for public support made by a nonprofit either directly or indirectly through a professional representative is a form of fully protected speech and is entitled to the full plenary protection of the First Amendment to the Constitution of the United States. [See *Riley v. National Federation of the Blind of North Carolina, Inc.*, 487 U.S. 781 (1998)].

The way the Telemarketing Sales Rule would now be applied to organizations like the F.O.P., working with professional representatives in their fully protected activity of seeking public support, would be to take regular supporters of our organization and place them out of reach. Individuals wishing to minimize

or eliminate calls received from such popular annoyances as long distance companies, do so without recognizing the fact that they have placed themselves in a position whereby they cannot be called by organizations with which they have a prior existing relationship. An added layer of the "do not call" regulation will also have the unintended effect of raising the cost of fundraising by increasing compliance costs, and thereby reducing the net amount of funds available for community services and activities.

In conclusion, Mr. Chairman, the Fraternal Order of Police believes that the FTC's proposed amendments to the Telemarketing Sales Rule should be revised so that they do not apply to calls made by or on behalf of nonprofit organizations that are not selling goods or services. We further believe that the Commission's proposed "do-not-call" registry is outside of the scope and intent of the "Crimes Against Charitable Americans Act," and should be eliminated from the proposed rule.

On behalf of the membership of the Fraternal Order of Police, let me thank you again, Mr. Chairman, for the opportunity to appear before you here today. I would be pleased to answer any questions you may have at this time.

TESTIMONY

of

Louis P. Cannon

President

District of Columbia Jerrard F. Young Memorial Lodge #1

on

Proposed Rulemaking by the Federal Trade Commission

Regarding a National "Do Not Call" Registry

before the

Senate Committee on Commerce, Science and Transportation

Subcommittee on Consumer Affairs, Foreign Commerce and Tourism

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